

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

February 20, 2007

The Rhode Island Ethics Commission held its 3rd meeting of 2007 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, February, 2007, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair Richard E. Kirby*

Barbara Binder, Vice Chair James V. Murray

George E. Weavill, Jr., Secretary James C. Segovis

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason M. Gramitt and Dianne L. Leyden; and Commission Investigators Steven T. Cross, Peter J. Mancini and Michael Douglas.

At approximately 9:13 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on January 23, 2007. Commissioner Murray noted that the

minutes should reflect that he was present at the start of the meeting.

Upon motion made by Commissioner Binder and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To approve the minutes of the Open Session held on January 23, 2007, as corrected.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Suzanne J. Vadenais, a member of the Woonsocket City Council. Staff Attorney Gramitt advised that the matter was tabled at the last meeting to allow the petitioner to attend and provide further information. The petitioner informed that her son has been a police officer for five years and that she has previously voted on police contracts. She stated that she requested an opinion due to a difference of opinion with the Mayor regarding the Deputy Chief's contract.

In response to Commissioner Weavill, the petitioner represented that police officers must sign up for overtime and special duty assignments, which are selected by the detail officer. Commissioner Weavill expressed concern that there is some degree of discretion regarding the assignments and how much influence the Deputy Chief would have. She indicated that it would go through the chain of

command to the Lieutenant, Captain, Deputy Chief and, ultimately, the Chief.

***Commissioner Kirby arrived at 9:20 a.m.**

In response to Commissioner Segovis, the petitioner explained that the Deputy Chief may have a perception that certain Council members, including her, may have a personal animosity toward him. However, she stated her belief that the individual does not possess the right qualifications for the position. She noted that he has never reprimanded her son. Commissioner Binder inquired regarding the Deputy Chief's involvement in educational advancements for officers.

The petitioner indicated that it would be by union contract. She explained that the Deputy is the next in line of command to the chief but no real job description exists. Commissioner Binder expressed her concern regarding voting on someone in a family member's chain of command. In response to Commissioner Murray, the petitioner stated that the Council has tabled action on the contract until the two lawsuits are resolved. Commissioner Murray suggested that the issue may not be ripe for an opinion, as the vote will not come up until the litigation is resolved and facts could change in the interim.

Upon motion made by Chair Lynch and duly seconded by Commissioner Murray, there was discussion. Commissioner Murray noted that that contract vote has been tabled. Commissioner Weavill stated that there is the possibility the vote might not even happen.

Commissioner Binder expressed her discomfort with the chain of command and Commissioner Segovis supported her concern. Staff Attorney Gramitt suggested that the matter be tabled without prejudice to the petitioner returning to the Commission when the issue is ripe. Chair Lynch and Commissioner withdrew their original motion. Upon motion made by Commissioner Binder and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To allow the petitioner to resubmit her request after resolution of the lawsuits.

ABSTENTION: Richard E. Kirby.

The next advisory opinion was that of Russell J. Mello, a Warren Planning Board member. Senior Staff Attorney D'Arezzo presented the Commission Staff recommendation and noted that the petitioner had advised her that he would be unable to attend and did not have any questions regarding the draft. In response to Commissioner Kirby, she stated that the Club owns the property and in the event of disbanding would distribute any profits after the building and other assets are sold. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Russell J. Mello, a Warren Planning Board member.

The next advisory opinion was that of Stephen R. Archambault, a Smithfield Town Council member. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was not present. Commissioner Segovis disclosed that the petitioner is from Smithfield, but he does not know him and believes he can fairly participate. In response to Commissioner Kirby, Staff Attorney Gramitt clarified that the individual who has an interest in the escrowed funds as an abutter is not the petitioner. In response to Commissioner Weavill, he explained that the petitioner sought guidance from the Commission and also from the Ethics Advisory Panel regarding any potential professional conflicts. Commissioner Murray suggested that a specific reference to the Code of Professional Responsibility be added on page four, given that the petitioner is an attorney. Commissioner Segovis voiced his support for the addition. Staff Attorney Gramitt noted that he would place the language within Footnote 2. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Stephen R. Archambault, a Smithfield Town Council member.

At approximately 9:46 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4), to wit:

a.) Motion to approve minutes of Executive Session held on January 23, 2007.

The Commission reconvened in Open Session at approximately 9:50 a.m. The Chair reported that the Commission voted to approve minutes of the Executive Session held on January 23, 2007.

The next order of business was discussion regarding potential regulatory actions for 2007 and correspondence received in support thereof. Chair Lynch recognized Representative Douglas W. Gablinske, who addressed the Commission regarding legislators who are employed by labor unions being able to participate on legislative matters regarding labor unions. He questioned how a union business agent who serves as a legislator could be allowed to promote the union's interests without being in conflict. He stated that presently almost 15% of our state senators are union business agents whose livelihood is derived from representing the union membership. He suggested that their integrity could and would most likely be compromised by participating in matters impacting the unions.

Representative Gablinske distinguished the larger class exception issue from the union business agent issue. He noted that the playing field at the General Assembly has become uneven at best. In

response to Commissioner Binder, he stated that as a real estate appraiser he could never participate in or vote on legislation impacting real estate appraisers. He suggested that the broader class exception issue itself needs to be thoroughly debated, recognizing that we have a part-time legislature that does need to earn a living. He indicated his belief that the union issue is more clear-cut.

In response to Commissioner Weavill, Representative Gablinske stated that there could be other similar conflicted relationships, such as if the Executive Director of the RI Chamber of Commerce were elected to office and then voted on the Chamber's interests. Commissioner Segovis expressed that he shared his concerns and noted that he is a union member as a Bryant faculty member. Chair Lynch also voiced support for his concerns, but noted that legislators do need to make a living. Chair Lynch stated that the Commission will look into the issue thoroughly. Commissioner Kirby suggested that he may wish to look into reducing the legislature by 2/3 and making it full-time as part of the next constitutional convention. He also suggested that Representative Gablinske look at the 7(b) opinions on the Commission's website to see how factually specific they are and how much the Commission struggles with its application. Executive Director Willever advised that representatives of Operation Clean Government (OCG) are present and may wish to comment on the issue raised.

***The Commission recessed at 10:13 a.m. and reconvened at 10:19 a.m.**

Sandra Thompson, First Vice President for OCG addressed the Commission and complimented Representative Gablinske for bringing the issue to the Commission's attention. She related that OCG is doing research regarding how other states handle the issue. She inquired whether this would be a legislative issue for the General Assembly to address or if the Commission could address it. Chair Lynch replied that the Commission has the authority to handle it, but would need to conduct research. Chair Lynch acknowledged OCG members Mathias Wilkinson and Paul Hobbes, who were also present. Christine Lopes, Executive Director of Common Cause, advised that Common Cause is in the process of drafting recommendations to bring before the Commission in the future.

Chair Lynch referenced the Governor's prior letter to the Commission recommending several regulatory actions. He noted that the Governor's comments seemed to mirror those of Representative Gablinske. He stated that two issues were previously addressed by the Commission, but noted that the Governor raised the issue of how much transparency is proper for financial disclosure, particularly with regarding to attorneys and clients. Chair Lynch suggested that 7(b) be put on the workshop list and that it would be more efficient for the entire Commission to meet to discuss the proposed regulatory actions, rather than as individual subcommittees. The consensus

was to proceed in this manner. Commissioner Binder suggested taking up a more problematic issue, like 7(b), along with a few more procedural issues. Chair Lynch suggested addressing the class exception and confidentiality. Commissioner Kirby added the definition of “business.” Commissioner Binder also noted that the Commission could be clearer regarding when a stenographic record is required. Commissioner Weavill stated, and Commissioner Binder concurred, that they could not address appearances of impropriety at the same time as 7(b).

In response to Staff Attorney Gramitt, Commissioner Binder clarified that 7(b) would involve a more general approach, rather than as specifically stated by Representative Gablinske. Commissioner Kirby noted that 7(b) is statutory, but could be narrowed via regulation. Commissioner Binder referenced the Commission’s constitutional authority. Staff Attorney Gramitt clarified that the Commission cannot alter a statute. He explained that a court would look to apply the statute and regulation in harmony, and if that were not possible, the regulation would be applied. He advised that this would be an area where the Commission should tread carefully.

Legal Counsel Managhan advised that she has been intrigued by the Court’s opinions which clearly give the Commission the right to legislate the Code of Ethics. Commissioner Kirby questioned whether, hypothetically, they could renounce the statute. Staff Attorney Gramitt suggested that the Commission could state that it

does not adopt the statute and instead applies the adopted regulation. Commissioner Kirby noted that if 7(b) were removed from the Code, a town councilor could not vote on a tax hike because he or she is a property owner. Staff Attorney Gramitt recommended that items 1, 2, 3 in his memorandum be placed on the next agenda, along with 7(b). Executive Director Willever advised the Commission that it has awesome plenary power and should do what it deems best for the state. Legal Counsel Managhan clarified that items 1, 2, 3, 8 and stenographic records would be on the agenda.

The next order of business was the Director's Report. Executive Director Willever reported that there are six Complaints and fifteen advisory opinions pending. He advised that Staff Attorney Gramitt has been conducting numerous ethics training seminars, which has resulted in a proliferation of advisory opinion requests. Chair Lynch complimented Staff Attorney Gramitt on the positive feedback received regarding his educational programs. Staff Attorney Gramitt noted that the entire legal and investigative staff is involved in these efforts to provide guidance regarding the Code. Staff Attorney Gramitt provided the Commission with a legislative update. He reported that there are significant differences between the two bills submitted by Common Cause and Operation Clean Government regarding the appointment process for the Commission. He noted that the Commission traditionally has not taken a position on such legislation. Commissioner Weavill expressed his concern that new members be appointed for continuity. Staff Attorney Gramitt stated

that the Governor's office is aware of the appointment issues faced by the Commission.

The next order of business was New Business. There being none, at approximately 10:43 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary